



Penobscot County Sheriff's Office

85 Hammond St. Bangor, ME 04401
207-947-4585

Troy J. Morton
Sheriff

William R. Birch
Chief Deputy

Bangor Daily News
Callie Ferguson
Reporter, BDN

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Ms. Ferguson:

I would like to be helpful and responsive to your questions, and will provide as much information as I am able.

First, it is the policy of Penobscot County to provide all employees, male and female, with an environment free from unlawful harassment and discrimination, including sexual harassment. It is also the policy of the Sheriff's Department to ensure that all inmates in custody at the Penobscot County jail are treated with dignity and fairness and that their rights are protected. The Sheriff's Department, which includes the jail, has many policies and procedures in place to protect these rights. We enforce them. Attached, for example, are copies of our Mission Statement, Core Values, Code of Ethics, Code of Conduct and Appearance, and policies or procedures on Respectful Workplace, Sexual Harassment, Inmate Supervision and Relations, Sexual Misconduct, Complaints Against Employees, and Criminal Conduct Engaged in by a Law Enforcement Officer. Any time we identify any infractions or conduct that appears to vary from these standards, we investigate, and where an infraction is substantiated, we take appropriate corrective action. While the vast majority of our 100+ employees have never had infractions, we do not hesitate to take action any time we learn of a problem, by report, observation, or otherwise.

Let me explain the disciplinary process. As a public employer, Penobscot County is governed by the Maine statutes that apply to counties and their employees. Non-probationary corrections officers and supervisors have due process rights with respect to their jobs under the Maine and U.S. Constitutions; they may be disciplined only for just cause, which is also required by union contracts. Copies of those contracts are attached.

When the Sheriff Department learns of a possible infraction that may warrant disciplinary action, the corrections employee is notified and may be placed on administrative leave if circumstances warrant. In the case of an internal investigation, the employee is scheduled for an evidentiary hearing, and is interviewed about the complaint. Other employees, inmates, and others may also be interviewed. If the investigation



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substantiates an infraction, the employee is given a disciplinary hearing to determine if Sheriff Department policies have been violated. If so, a written decision is issued and discipline is imposed. These procedures do not prevent a supervisor from informally counseling an employee when the supervisor sees questionable conduct that does not rise to a level of discipline. Such counseling is not considered discipline.

The Sheriff's Department generally follows the concept of progressive discipline but it may impose discipline at any level warranted by the facts and circumstances. For example, in the case of repeated tardiness, the Sheriff's Department would likely use progressive levels of discipline for each successive infraction related to tardiness. However, if an employee with a clean disciplinary record were to commit a very serious policy violation, the Sheriff's Department could jump straight to suspension or even termination. Furthermore, aggravating and mitigating factors (such as an employee's work history, willingness to accept responsibility, whether the act was intentional, and the level of discipline issued in similar cases) may factor into the level of discipline.

Once discipline has been issued, the employee has the right to grieve the discipline. The first step is to the Sheriff, the second step is to the County Commissioners, and the third step is to arbitration before the State Board of Arbitration and Conciliation. Discipline can be reduced or vacated at any step. Information regarding personnel complaints and investigations concerning county employees is confidential by statute, with a limited exception for final written discipline. In 30-A M.R.S. §503, the law states that "[c]omplaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action" are confidential. Only final written decisions relating to disciplinary actions are not confidential so while you may see the final result, you will not see the materials leading to that final decision, including the grievance process. We are not free to provide details on mitigating factors, or aggravating factors, to put the choice of discipline into context. And at times, coachings or more informal corrective conversations, sometimes referred to as counseling, are used by supervisors, which don't rise to the level of formal discipline. Since counseling is not considered discipline, and is akin to an on-the-spot performance evaluation, counselings are confidential. These procedures exist to protect the rights of the employees.

We also have policies and procedures to protect and ensure proper treatment of inmates. Of course, inmates are incarcerated because they are awaiting trial or were convicted of violating the law. While some are perfectly well-mannered, others are not. It is difficult to know which a person will be at any given moment. Many inmates suffer from mental



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health or substance abuse disorders. The jail can be a challenging work environment and staff must rely on each other to safely perform their jobs. Sometimes that makes people hesitant to file complaints about co-workers, despite Sheriff Department's reporting policies. Unfortunately, if problems are not reported or observed, the Sheriff Department cannot address them. Regardless of the source, all complaints are investigated and acted upon if warranted.

Turning to your questions:

1. We've spoke to two experts who say that, typically, any determination of sexual harassment is grounds for termination, and that the number of cases here indicates a pattern of unacceptable culture. Do you think that is a fair characterization? How would you characterize the culture around this issue at the jail?

Penobscot County by policy prohibits sexual harassment of employees and of inmates and others. Every employee and every inmate has a right to an environment free from sexual harassment. When harassment is reported or observed, we investigate and take prompt and effective corrective action. The goal of corrective action is to make the harassing conduct cease.

There are two kinds of sexual harassment—quid pro quo and hostile work environment. Quid pro quo is fairly easy to identify but rarely seen. Hostile work environment based is harder to identify because it can be a pattern of small incidents which individually may not be much concern but collectively can have a large impact. The specific facts of the situation may make all the difference. Please note that a hostile work environment must be based on sex in order to be sexual harassment. If hostility is not based on sex or gender in some way, then it is not sexual harassment. For example, the Code of Conduct requires employees to be respectful and courteous to each other. If an employee violates this policy, a "hostile" work environment may be created in the general sense, but not necessarily in the context of sexual harassment. Likewise, the Sheriff's Department has a policy prohibiting jail personnel from initiating social contact with people who are or were recently incarcerated at the jail. While this is a violation of policy and warrants discipline, it is not in and of itself sexual harassment. Where discipline is issued for "sexual harassment," the Sheriff's Department is disciplining conduct that violates department policies; it does not necessarily mean that the conduct rose to the level of sexual harassment.



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Given that Corrections Officers and Supervisors rely on each other so heavily in the safe performance of their jobs, we have identified that there has been reluctance from people to complain about what they believe to be sexual harassment or other policy violations, or if they see what they believe might be harassment of others. We have emphasized in training, policies, assurances of confidentiality, and protections against retaliation for making complaints, the need for complaints to be communicated to supervision. Unfortunately, if people do not complain, and a supervisor does not hear of or observe the problem, the Sheriff's Department may not know that an investigation is necessary.

Sexual harassment could be grounds for termination under the right circumstances. However, each case is unique and due process requires that the particular facts and circumstances of each case be considered before discipline is issued. For example, termination may be appropriate for a supervisor soliciting relations with a supervisee but an employee with a clean record telling an inappropriate joke may warrant some other form of discipline.

The Sheriff Department operates 24-hours per day and has a large number of employees. The number of disciplinary actions related to sexual harassment does not indicate a pattern of unacceptable culture; rather, it demonstrates a pattern of enforcement of the Sheriff Department's policies to prevent such a culture.

2. It appears that Steven Buzzell's behavior was not an isolated incident. We have counted at least five women who have reported sexual harassment in recent years, and the documents you provided show that at least one person was reported to administrators for similar behavior to Buzzell even after he resigned and others were disciplined this summer. Who should be held accountable to prevent this behavior from continuing?

We have more than 100 corrections employees, who cover a 24-hour, seven-day per week facility. We investigate and take action any time improper conduct is reported or detected. A very small number of individuals have been found to have engaged in conduct relating to sexual harassment. The Sheriff's Department strives for no incidents, and takes immediate action when problems are reported. The Sheriff's Department trains all employees and maintains policies that direct employees to file complaints if they feel they are being harassed or if they see somebody else potentially being harassed. While the Sheriff's Department may be able to catch some problems without a complaint being filed, if employees do not notify the Sheriff's Department of problems, the Sheriff's Department cannot investigate and take action to prevent such problems. Complaints can be made command staff, the Jail Administrator, the Sheriff, or the County's Human



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Resource Manager whose office is located outside the jail. Everyone in the department is accountable for preventing sexual harassment from corrections officers to the Sheriff and County Commissioners.

3. Do you think that past discipline for sexual harassment or behavior that contributes to a hostile/unprofessional environment has provided enough deterrent to stop if from continuing?

The Sheriff Department's policies specify that sexual harassment and misbehavior is not permitted. Disciplinary action is intended to be sufficient to stop the offending conduct. An employee who engages in later instances of offending conduct is subject to progressive discipline, up to and including termination, depending upon the specific facts and circumstances. We do not knowingly tolerate any continuation of improper conduct, and we take a level of disciplinary action designed to be both effective and commensurate with the infraction. That cannot guarantee that no future infraction will occur, but in such instances, progressive discipline is taken.

4. To what degree does the union play a role in thwarting and/or mitigating terminations from employment at the jail?

If an employee is charged with violating a Sheriff Department policy, the employee has the right to union representation. Some employees accept discipline and others do not without challenging it. If discipline is issued, the employee has the right to union assistance in pursuing a grievance. Once the case has been made, the decision whether to modify or vacate discipline rests first with the County Commissioners, and then with the State Board of Arbitration and Conciliation if the grievance goes to step 3. Both the County Commissioners and Board of Arbitration and Conciliation must review each case based on their unique facts and circumstances.

5. Have any past disciplinary matters been scrubbed from the personnel files of employees that were provided to us? (With reference to this part of Gardner's file: "All documentation of such counseling and discipline shall be removed from the employee's personnel file at the time periods specified above upon the request of the employee.")

The two collective bargaining agreements provide that discipline will be removed from a personnel file after a certain amount of time provided there is no further counseling or discipline related to the same offense. The time frames vary from one year for oral reprimand to five years for more serious offenses. The State Archive regulations permit



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disciplinary records to be destroyed as specified in a collective bargaining agreement. No purged disciplinary actions, if there were any, have been provided.

6. Also with regard to Gardner's file, does this line mean that his demotion did not cause him to lose seniority that would have allowed others to "bump" him from a job? "When an employee is demoted (whether voluntary or involuntary), he/she may be placed in a position in the Corrections bargaining unit and retrain all seniority in the bump back as if there was no break in service." We want to make sure we understand that correctly. So, he got a decrease in pay but maintained his seniority, which would protect him in case of a layoff?

If a Supervisory Unit employee is demoted to the Corrections Line Unit, the employee's pay is reduced but seniority is maintained.

7. Given that we were not provided any documents that mentioned his name, did Steven Buzzell have no disciplinary history with the county? Is that something you can confirm?

If no discipline was provided, there were no current final disciplinary actions. No purged disciplinary actions, if there were any, have been provided.

8. We requested records for an "Ed Mulholland," believing that was the same person as the William E. Mulholland at the center of a 2015 lawsuit against the county. (Attached is the complaint.) Can you confirm that they are the same person, and/or let us know if we were mistaken? I'll explain why: In the return of the FOAA request, we received no documents to show that "Ed Mulholland" had ever been disciplined, and I wanted to clarify whether we should take that to mean that William E. Mulholland, as referred to in the 2015 lawsuit, was never disciplined during his tenure with the county.

Former corrections officer William E. Mulholland used the nickname "Ed." He was employed as a corrections officer until he resigned in November, 2013. If no discipline was provided, there were no current final disciplinary actions.

9. Some of the officers who were disciplined were "counseled" as a penalty. We want to make sure that just meant "talked to" -- as opposed to being offered psychological counseling.



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Counseling in that context refers to coaching and informal corrective action that does not rise to the level of formal discipline. References to psychological counseling, if there were any, would have been redacted.

10. Are officers who are demoted allowed to return to supervisor positions?

Applications are considered on an individual basis, based on the circumstances. We try hard to choose the best person for the position, who will likely succeed in the position. A supervisor demoted to the line unit would need to apply for a supervisor opening, and be awarded it, to return to being a supervisor. The likelihood of our deciding to promote back to supervisor a person who has been demoted from that position seems doubtful, but he or she is not categorically prevented from applying.

Summary

I want to emphasize that we have a very good workforce and the County strives to provide all employees, male and female, with an environment free from unlawful harassment and discrimination. The jail can be a challenging work environment as it is. The Sheriff's Department and County Commissioners take claims of sexual and other forms harassment very seriously. We have good policies and procedures in place to prevent sexual harassment and people are trained. The Sheriff's Department takes immediate steps to investigate all complaints and to rectify problems as soon as they are brought to our attention.

Respectfully,

Sheriff Troy Morton

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